

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

**Market Square Restaurant,
Inc.,**

Debtor.

Chapter 7

Bankruptcy No. 20-05532

Honorable Jacqueline P. Cox

NOTICE OF MOTION

Please take notice that on **Tuesday, June 9, 2020, at 1:00 P.M.**, or as soon thereafter as counsel may be heard, the undersigned attorneys shall appear telephonically before the Honorable Jacqueline P. Cox, United States Bankruptcy Judge for the Northern District of Illinois, and then and there present the attached **Trustee's Motion to Employ Special Counsel, Retroactive to March 20, 2020**, a copy of which is attached hereto and herewith served upon you. You may appear if you so choose.

This motion will be presented and heard telephonically. No personal appearance in court is necessary or permitted. To appear and be heard telephonically on the motion you must set up and use an account with Court Solutions, LLC. You can set up an account at www.Court-Solutions.com or by calling Court Solutions at (917) 746-7476.

Pursuant to SECOND AMENDED GENERAL ORDER NO. 20-03 regarding Court Proceedings During Covid-19 Public Emergency, a party who objects to the relief requested by this application and wants the application called for presentment must file a Notice of Objection no later than two (2) business days before the presentment date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the application without a hearing before the date of presentment.

Dated: June 2, 2020

Deborah K. Ebner, not
individually but as the chapter 7
trustee of the bankruptcy estate of
Market Square Restaurant, Inc.

By: /s/ Ariane Holtschlag
One of Her Attorneys

William J. Factor (6205675)
Ariane Holtschlag (6294327)

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CERTIFICATE OF SERVICE

I, Ariane Holtschlag, an attorney, hereby certify that on June 2, 2020, pursuant to Section II.B.4 of the Administrative Procedures for the Case Management/Electronic Case Filing System and Fed.R.Civ.P. 5(a), I caused a copy of the foregoing *Notice of Motion* and the accompanying *Motion* to be served electronically through the Court's Electronic Notice for Registrants on all persons identified as Registrants on the below Service List and by US Mail on all persons identified as Non-Registrants on the below Service List.

/s/ Ariane Holtschlag

SERVICE LIST

Registrants

(Service via ECF)

Gregory J Jordan

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Deborah Kanner Ebner

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mzito@jz-llc.com

Non-Registrants

(Service via U.S. Mail)

Market Square Restaurant, Inc. c/o Sam Pappas P.O. Box 7321 Prospect Heights, IL 60070	
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
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In re:

**Market Square Restaurant,
Inc.,**

Debtor.

Chapter 7

Bankruptcy No. 20-05532

Honorable Jacqueline P. Cox

TRUSTEE'S MOTION TO EMPLOY SPECIAL COUNSEL
RETROACTIVE TO MARCH 20, 2020

Deborah K. Ebner, not individually, but solely in her capacity as the case trustee (the “**Trustee**”) for the bankruptcy estate (the “**Estate**”) of Market Square Restaurant, Inc. (the “**Debtor**”), respectfully requests authority to retain special counsel pursuant to 11 U.S.C §§ 105(a), 327(e), 328(a) and Rule 2014 of the Federal Rules of Bankruptcy Procedure, and in support of the requested relief states as follows:

JURISDICTION

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois.
2. Venue of the above-captioned case (the “**Case**”) and of this motion is proper in this Judicial District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and (O).

BACKGROUND

3. On February 28, 2020 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 7 of title 11, United States Code (the “**Bankruptcy Code**”), thereby initiating the Case.

4. Deborah K. Ebner was thereafter appointed as the Case trustee.

5. On or about October of 2013, David Epstein and Gary Weintraub (***“Proposed Special Counsel”***) commenced representing the Debtor in litigation related to lease disputes the Debtor was having with its ground landlord. The disputes included, among other things, whether the landlord was properly charging the tenant for management fees and the amount of square footage for determining the rent due, and the Debtor’s ability to operate video gaming from its premises.

6. Accordingly, the Trustee seeks authority to retroactively employ Proposed Special Counsel on behalf of the Estate to pursue an appeal with the Illinois Appellate Court of orders by the Circuit Court in case number 2011 CH 39924 (the “Lease Litigation”) and to pursue any remanded litigation. The Lease Litigation relates to multiple disputes between the Debtor and its former landlord, including a dispute about whether the landlord’s CAM charges were properly calculated, whether the Debtor is entitled to a refund of certain payments, including any related to CAM charges and, if so, the amount of such refunds.

DISCUSSION

I. Representation.

7. Section 327(e) of the Bankruptcy Code provides that the Trustee may, subject to court approval, employ an attorney that has represented the debtor, for a “special purpose,” when it is in the best interests of the Estate.

8. In this case, the Trustee seeks authority to retroactively retain the Proposed Special Counsel on a total, combined, contingent fee basis of thirty-three and one-third percent (33 1/3rd) plus costs.

9. The Trustee believes that the Proposed Special Counsel’s representation of the Debtor is beneficial to the Estate. Proposed Special Counsel has particular expertise and experience with respect to the Lease

Litigation. Additionally, the Lease Litigation has the potential to bring substantial assets into the Estate at no direct cost to the Estate. Because Special Counsel is being engaged on a contingent fee basis, the Trustee believes that the retention of Proposed Special Counsel represents a sound exercise of her business judgment.

II. Compensation.

10. Proposed Special Counsel has agreed to represent the Estate for a total, combined contingent fee of 33 and 1/3 % plus costs of suit.

11. Proposed Special Counsel understands that any and all compensation for legal services rendered on behalf of the Estate, including contingent fees, are subject to Court approval.

12. The declaration of David Epstein in support of this motion, is attached as **Exhibit 1**.

13. The declaration of Gary Weintraub in support of this motion, is attached as **Exhibit 2**.

WHEREFORE, Deborah K. Ebner, not individually, but solely in her capacity as the case trustee for the bankruptcy estate of Market Square Restaurant, Inc. respectfully requests authority to retain the Proposed Special Counsel as special counsel for the Estate in pursuing, negotiating and resolving the Claim under the terms contained in this motion.

Dated: June 2, 2020

Respectfully submitted,

Deborah K. Ebner, not
individually but as the chapter 7
trustee of the bankruptcy estate of
Market Square Restaurant, Inc.

By: /s/ Ariane Holtschlag
One of Her Attorneys

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